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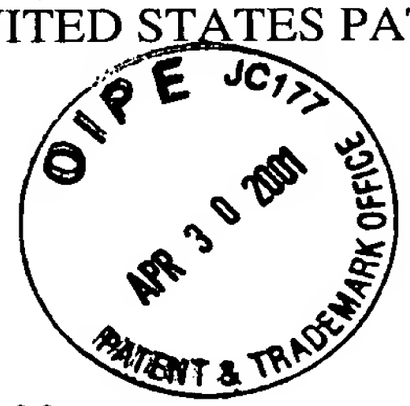
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re application of:

NI *et al.*

Appl. No. 09/448,868

Filed: November 24,1999

For: **Death Domain Containing Receptor-4 Antibodies**

Confirmation No. N/A

Art Unit: 1646

Examiner: Kaufman, C.

Atty. Docket: 1488.1300004

Reply To Restriction Requirement

Commissioner for Patents
Washington, D.C. 20231

Sir:

In reply to the Office Action dated **March 28, 2001**, Applicants hereby provisionally elect, *with traverse*, to prosecute **Group I**. Claims 22-42, 44-64, 66-73, and 75-82 are directed to the invention of Group I. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

Applicants respectfully traverse the restriction requirement as it applies to Groups I and II (claims 43, 65, 74, and 83). The Examiner alleges that Groups I and II are patentably distinct inventions. According to MPEP § 803, restriction remains improper even for patentably distinct inventions unless the examiner can show that the search and examination of the groups would entail a "serious burden." For the instant case, the Examiner has failed to make such a showing.

Applicants submit that a search of the antibody claims of Group I or the method claims of Group II would be coextensive as a person skilled in the art would as a matter of routine use the claimed antibody to detect the disclosed polypeptide as described in the claims of Group II. In publications describing a novel antibody, the authors typically disclose using the antibody in a functional assay for biological detection. Therefore, a

search for either the claimed antibody or the method of its use would clearly result in overlapping information useful for either group. Accordingly, the restriction requirement as applied to Groups I and II should be withdrawn. Reconsideration and withdrawal of the restriction requirement are respectfully requested.

Applicants note that the claims of Group I and II are related as between a product and a method for using the product, respectively. Furthermore, the claims comprising Group II depend from and includes all the limitations of the product claims of Group I. A notice in the Official Gazette outlining guidelines for product and process claims specifically states that:

> in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

1184 OG 86 (March 26, 1996). Accordingly, if the claims of Group I are found allowable, Applicants respectfully request that the claims of Group II be rejoined and examined for patentability.

It is believed that extensions of time are not required, beyond those that may otherwise be provided for in accompanying documents. However, in the event that additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any

fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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Date: April 30, 2001

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